



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

***STATEMENT OF THE OFFICE OF STATE ETHICS FOR CONSIDERATION BY THE
GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE
CONCERNING COMMITTEE BILL No. 727***

***AN ACT CONCERNING CONFLICTS OF INTEREST UNDER THE CODE OF ETHICS FOR
PUBLIC OFFICIALS AND STATE EMPLOYEES.***

March 25, 2013

Carol Carson, Executive Director, Office of State Ethics (860) 263-2400

The Office of State Ethics ("OSE") respectfully submits the following comments regarding Committee Bill No. 727, An Act Concerning Conflicts of Interest under the Code of Ethics for Public Officials and State Employees, which would amend what constitutes a substantial conflict of interest for public officials and state employees.

Although the OSE generally supports strengthening ethics laws, the proposed language of the bill contains substantial flaws and, therefore, for the reasons set forth below, the OSE opposes this bill as drafted.

The proposed language of the bill uses very broad terms not defined in the Code of Ethics for Public Officials ("Ethics Code"). For example, the phrase "entity regulated by the state" can apply to any entity governed by the laws of the state. In fact, there are very few entities that are not in some way regulated by the state. In contrast, the current jurisdictional reach of the Ethics Code limits regulated entities to registered lobbyists, prequalified state contractors, and entities that are doing business with or seeking to do business with, or are regulated by, the department or state agency in which a public official or state employee serves or is employed. However, the proposed language of the bill appears to capture virtually any public official or state employee who is somehow connected to an entity regulated by the state. For example, if a representative is an employee of a large insurance company, but holds a low level clerical position, would the representative be barred from the Insurance/Real Estate Committee? Would a representative who in his private attorney practice represents a condominium association in a court proceeding be restricted from serving on the Insurance/Real Estate Committee?

In addition, the term "receives" is not defined and, if interpreted broadly, could include rebates, reimbursements, and other compensation. For example, if a representative "receives" an insurance reimbursement, is he barred from the Insurance/Real Estate Committee? If a senator injures herself in her outside employment and receives workers compensation, is she barred from the Labor/Public Employee Committee?

Written
3/25/13

The proposed language of the bill raises constitutional issues concerning separation of powers with the OSE attempting to bar legislators from sitting on a legislative committee. Further, as proposed, the language of the bill will likely capture unknowing violators, raising due process concerns. If a person subject to this provision does not (or cannot) know whether he receives money from a prohibited source, will a court ultimately rule that there is an absence of due process? Does a recipient of \$1000 always have an obligation to inquire whether the source is one of the prohibited entities above? Some of this issue may be cured if the definition of "receives" is able to exclude things like rebates, reimbursements, insurance claims, tax refunds, lottery winnings, estate payments, judgments, etc.

Finally, a serious consideration should be given to disclosure in place of the proposed prohibition. For example, any public official or state employee shall disclose in writing (within a prescribed period) any financial benefit over \$1000 that the official or employee has received from any entity regulated by his agency or over which the official or employee exercises regulatory or official authority. Such statement would be filed with the OSE.

In any event, the existing provisions of the Ethics Code already address substantial and direct conflicts of public officials and state employees through § 1-85 of the general statutes. Under this provision a public official or state employee cannot take official action or vote on a matter if the public official or state employee, his or her immediate family member or any associated businesses will derive direct financial gain. This provision could be strengthened to include outside employers, so a public official and/or state employee would not be able to take official action or vote on the matter involving his or her outside employer if such action were to provide direct financial gain or loss to the outside (or non-state) employer. Further, § 1-84 (c) already prohibits the use of office for financial gain and § 1-84 (g) prohibits solicitation or acceptance of "anything of value" with the understanding that official action would be or had been influenced thereby.

Thank you for your consideration.